

REMARKS

Applicant has carefully reviewed the Office Action dated 12/23/02. Applicant has amended Claim 14 to more clearly point out the present inventive concept. Reconsideration and favorable action is respectfully requested.

Claims 14-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Austrian Futures and Options Exchange (OTB) in view of Coote. This rejection is respectfully traversed.

Applicant has amended the claims to provide some clarifying language which does not provide any limitation to the claims. As such, the limitations in the claims are substantially the same. However, these amendments were made in an attempt to clarify the language and what was meant by the one party being closed out due to their assigned funds being reduced to zero and then *simultaneously* closing all the contracts out by the other party, the counter party to a contract. In order to elaborate upon this language, the following explanation is believed to be helpful.

In general, the way the market systems work is to provide a contract exchange, which contract exchange is operable to provide the ability to allow a party to enter into a contract for a commodity wherein the contract exchange will match two parties. This matching of two parties is basically done without either party knowing the other party's identity. When a contract is initially set up, typically the contract exchange will either create a new contract between the one party and the other party or substitute the new party for another party in the market. This substitution is the "novation" as referred to in the specification.

When one party enters into a relationship with the contract exchange, this relationship is set up in accordance with the various rules. These rules are set forth beginning on page 11, line 22 of the specification. When the fund is initiated, the investor will set up a deposit account and will deposit funds therein. In addition, and in accordance with the claim language, there will be a defined amount of assigned funds. These assigned funds are the amount of money that the contract exchange is allowed to invest in contracts. Depending upon how the rules are set out, the contract exchange when there is a tick in the market can transfer funds representing any gains

or losses between the parties or buy and sell contracts depending upon the trading order provided to the contract exchange by the investor (page 12, lines 1-2). It may be helpful to go through the various examples in the specification to explain this.

For Examples 1-5, the preferred trading method is the accumulation of surplus assigned funds.

In Example 1, an investor with a long position buys ten contracts at \$3,700.00 each, which are geared at 10:1 gearing ratio or leveraged ratio which only requires the investor to have \$370.00 available per each contract. If the investor puts in \$3,700.00 in this example, then the contract exchange can buy ten contracts. As in Example 1, there is no move in the market and, therefore, there is no profit or loss. In Example 2, there is an example of how the value of the investor varies if the contract price moves by \$1.00. This raises the contract price from \$3,700.00 to \$3,701.00. Since the number of contracts purchased total equals \$37,000.00 and the new total price is \$37,010.00, this results in a \$10.00 profit to the investor. Of course, the way the rules are set up, this investor still has a minimum required assigned funds at the 10:1 gearing ratio of \$3,701.00. The next example, Example 3, shows what happens when the contract price moves back down \$1.00 to \$3,700.00 which results in the entire profit being negated. However, when the next move occurs where the price goes down to \$3,699.00, it can be seen that the total profit is now -\$10.00, a loss. Since these moves result in actual transfer of funds from the counter party to the current investor or from the current investor to the counter party, this move would result in \$10.00 being transferred to the counter party. The result is that, according to the rules set up between the investor and the contract exchange, the contracts will be sold. This is illustrated in Example 5 wherein the contracts are sold out at a price of \$3,699.00 resulting in an overall loss to the investor of \$10.00 such that the original \$3,700.00 investment is now \$3,690.00. Understand that, during this close out in the market, nothing happens to counter parties. The mechanism that the clearing house utilizes to facilitate this kind of control is to attempt to close out a contract by novating this party's interest in the contract. This is facilitated by finding another party to take over the contract at that price. However, if there is no one found to substitute for that party, then what the clearing house does is utilize the "market makers" to absorb the contract. It is important to note that the counter party to the contract is not closed out

in this situation. They remain the holder of the other side of the contract. This is important for the later discussion of how Examples 11 and 12 work.

In Examples 6-12, the preferred trading method is the build up of contract numbers.

The previous examples illustrated the concept of buying ten contracts and then closing out a position at a predetermined level. In Example 6, there is illustrated an example wherein contracts are built up from an initial position of holding 100 contracts wherein the number of contracts is varied. In the previous examples, the number of contracts remained the same until they were totally closed out. In this example, it can be seen that, with a long position, the contract price will initiate at a contract price of \$400.00 and, with a gearing ratio of 10:1, that the initial assigned funds is required to be \$4,000.00 for 100 contracts. The system is set up such that, when the price of the contract moves upward to \$402.00 per contract, a resulting profit of \$200.00 will allow an additional four contracts to be purchased at the gearing ratio of 10:1. Thus, as can be seen in this example, the number of contracts is increased to 104. This amount of money came out of the surplus assigned funds of \$180.00, keeping in mind that a minimum required assigned funds of \$4,180.00 must be maintained when purchasing these new contracts due to the gearing ratio. In Example 7, the opposite example occurs, which requires reducing the number of contracts. This occurs when the price moves in the wrong direction, down for a long position. A move of just \$0.60 per contract results in a loss of \$60.00 to the investors which is absorbed by selling contracts. Again, the selling of contracts is one that does not require the counter party to actually sell their contracts but, rather, it requires the clearing house in the overall market system to novate that contract or contracts to find a substitute seller of the contract or to actually use the market maker to absorb the contract price. There is no closing out of the counter party in this situation. As noted in the specification, it is the clearing house that removes the contract holder's deficit by selling the contracts.

Exempt Closing Order.

In Example 9, there is illustrated an example wherein a price fluctuates up and down and wherein the number of contracts for the long contract, which initially purchased 400 contracts at a 20:1 gearing ratio, varies the number of contracts from 200 down to 67. In this example, the rules do not necessarily keep the surplus of assigned funds to zero. Example 10 illustrates the situation for a short position wherein a move downward in the market results in a profit to the contract holder. This is the counter-party to the investor in the long position. Note that, in Examples 9 and 10, there is no requirement to close out either party's positions.

In Example 8, there is illustrated a large price gap wherein the long position holder is gapped down to where the contract price falls to a level wherein the remaining assigned funds will not cover the cost of the contracts and, therefore, all the contracts must be closed out. In this situation, the entire \$4,000.00 will be transferred to the counter-party(s). It is noted that, although there is indication that there is a single counter-party, in actuality there could be multiple parties, one for each contract. This results in both parties being closed out because in Example 8 the contract price is outside the bid/offer parameters. In this situation the clearinghouse exercises its protection call option. Had the offer parameter been less than the contract price then the market maker would have been novated for the long investor.

In providing protection against a party not having sufficient funds, the remaining assigned funds equals the minimum required assigned funds and then a move downward in the market depletes the remaining assigned funds. This can be seen in Example 11, between steps 11 and 12. A move from a contract price of \$93.3 to \$97.972 results in a total depletion of the remaining assigned funds. The clearing house recognizes this and exercises the "protection" option and closes out that party. Again, the closing out of the party in this action merely results in that party losing the entire initial investment that was defined as the assigned funds portion of their contract management account. This is very akin to a margin call. With the rules set up as set forth in the specification, there really is no margin call, but there could be. This would be a situation wherein the contract exchange would have the authority to transfer money from the cash management account over to assigned funds to increase the amount thereof. However, if money is not

available for the transfer of funds into the assigned fund account, then this party will be closed out. Otherwise, there would be a loss involved.

Now examine Example 12. This is where there is a deviation from what is conventional. In this example, investors investing on the long side of the contract from the short side, as set forth in Example 11, have a contract price that varies as noted hereinabove with respect to Example 11. It can be seen that at step 11, the investor in the long position has a loss of \$18.97, which is still above the required assigned funds which initially was \$2,000.00 and is now only \$102.00. If the market were to move downward again, this party could be closed out in accordance with the present invention. However, the market moves in their favor from \$93.3 to \$97.972. If the contract exchange and the clearing house worked in accordance with the rules noted hereinabove prior to Example 11, then this party would maintain their position. It can be seen that the move from step 11 to step 12 results in a profit to the investor holding the long position of \$102.784. However, it can be seen that the number of contracts is reduced from 22 to a value of 0, i.e., this party is actually closed out of the market. If it were not for the process of the present invention, this party would not have been closed out. The reason for this is that, prior to the present invention, there was no agreement between the two parties via the contract exchange such that a party that was actually making a profit would agree to be closed out of the market. As noted hereinabove, the conventional method was to actually novate the losing party that had depleted their assigned funds by substituting other parties with a short position in the contract with the party for the long position. However, the present invention sets forth that the party holding the long position in the current example has their contracts actually closed out and has no say in keeping their position. This is distinctly different from anything that is disclosed heretofore. Of course, it should be understood that the opposite could happen wherein the person holding the long position had their contracts closed out due to a margin call and the party holding the short position would have their position closed out, although they were still making a profit and they still had sufficient assigned funds to cover their position. It can be seen again with reference to Example 12, that the assigned funds did not go to zero. This is the typical parameter by which the clearing house will close a party out or novate that party in the market, i.e., this is a conventional margin call which is not justified under prior art systems in accordance with the

prevailing rules at that time. This margin call situation does not occur with respect to the party of Example 12, but they are still closed out. The only way to do this is to create an indivisible contract between the two parties that requires both parties to agree to this type of situation. Even though they have no knowledge of who the other party is, the contract exchange has the rules set up such that this occurs.

Returning to the references cited by the Examiner, the Examiner has stated that there is an “indivisible financial contract” between the first and second parties. The Examiner specifically referred to ¶ 4.8 with respect to this aspect. It is noted that in ¶ 4.8 that the OTOB is set forth as a contractual partner for both parties to a transaction. It is noted that the OTOB operates as a central clearing house and it basically provides the operation as a principal, a market-maker, and an agent. As such, it does have the market maker function. There is nothing set forth in ¶ 4.8 or anywhere in the OTOB reference that sets forth any relationship between the two parties such that a party in the situation involving a margin call would have their position closed out and that the counter-party would *simultaneously* have their position closed out. The Examiner has clearly set forth that there is a possibility of a margin call, which the Examiner uses the Coote reference as support for, wherein if an investor fails to meet a margin call, their contract would automatically be closed out by the exchange. This is a conventional margin call. The Examiner has stated that it would have been obvious to one of skill in the art to close out an investor’s contract who did not meet the margin call. However, there is nothing stating what happens to the counter-party. The Examiner has taken official notice that this is old and well known in the art. The clearing house is to close out the contract of a counter-party without requiring authorization by either party. However, Applicant contends that the conventional operation of a clearing house is to close out only the party that is in a position wherein they are about to lose money, i.e., the will go below their margin limit or the assigned funds limit. There is no reason to close out the other party, as that party is making a profit. To accommodate for this in the market place, the clearing house functions as a market maker to absorb such situations. This absorption of such situations would be where they could not find another party to substitute for the party being closed out of the market, i.e., there is no way to novate the situation with another party in the market, and the clearing house absorbs the contract at that price. This is how the clearing house handles these

situations. That is the primary purpose for the market maker. With Applicant's present inventive concept, as defined by the amended claims, there is no need for this situation, as they have an arrangement with the party that is actually making a profit to close their position out. This is distinctly different from what has gone before now.

The claims have been amended to set forth that the situation for closing out the counterparty only occurs when the clearing house is unable to dispose of all the contracts in the market. On p. 5, beginning at line 30 of the Specification, this is described. It is noted in the specification that the clearing house basically holds the options on all the contracts and has the ability to exercise its option rights to dispose of some or all of a party's contracts in the event that that party's funds become insufficient to cover the portion of the value of the contracts held. This would result in the party in the margin situation having their position closed out. However, in the event that the clearing house is unable to dispose of the contracts required in the market it can then close that party's contracts out and simultaneously close all the contracts held by the counterparties. It is only in this situation that the simultaneous closing would occur. Again, Applicant is unaware of any situation where this occurs and this is not the conventional manner by which a clearing house handles margin calls. Otherwise investors in a non-margin call situation would be seriously disadvantaged by market fluctuations.

Applicant has now made an earnest attempt in order to place this case in condition for allowance. For the reasons stated above, Applicant respectfully requests full allowance of the claims as amended. Please charge any additional fees or deficiencies in fees or credit any overpayment to Deposit Account No. 20-0780/LAUS-24,408 of HOWISON & ARNOTT, L.L.P.

Respectfully submitted,
HOWISON & ARNOTT, L.L.P.
Attorneys for Applicant



Gregory M. Howison
Registration No. 30,646

GMH:jk

P.O. Box 741715
Dallas, Texas 75374-1715
Tel: 972-479-0462
Fax: 972-479-0464
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